

Alternative Draft PBT Rule Outline and Language

Submitted by People For Puget Sound, Washington Toxics Coalition, WashPIRG, Washington Physicians for Social Responsibility, the Breast Cancer Fund, and Institute for Neurotoxicology and Neurological Disorders

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Part I - General Provisions

WAC 173-XXX- 010 Purpose and Goals

(1) **What is the purpose of this chapter?** The purpose of this chapter is to:

- (a) Establish criteria Ecology and Health will use to identify persistent bioaccumulative toxins that pose human health or environmental impacts in Washington State.
- (b) Establish an initial list of persistent bioaccumulative toxins to be used to implement Ecology's *Strategy to Continually Reduce Persistent Bioaccumulative Toxins (PBTs) in Washington State* and procedures Ecology and Health will use to review and periodically update the list.
- (c) Establish criteria for selecting persistent bioaccumulative toxins for which Ecology and Health will prepare chemical action plans.
- (d) Define the scope and content of chemical action plans and establish processes Ecology and Health will use to prepare those plans.

(2) **What are the goals of this chapter?**

The goal of this chapter is to:

- (a) Facilitate the implementation of the *Proposed Strategy to Continually Reduce Persistent, Bioaccumulative Toxins (PBTs) in Washington State* by reducing, and where possible, eliminating the use and production of persistent toxic chemicals.
- (b) Apply the precautionary principle when making decisions on PBTs and actions for reducing or where possible eliminating their use, production, and release.

WAC 173-XXX-300 What is the purpose of the PBT List?

- (1) The purpose of the PBT List is to identify persistent, bioaccumulative, and toxic chemicals, and metals, based upon the criteria specified in WAC 173-XXX-100, for which actions will be taken to reduce, and where possible, eliminate their use and production in Washington. Such actions shall include:
 - (a) Chemical Action Plans: Ecology, Health, will use the PBT list to identify chemicals for which the department will prepare action plans that identify current sources of the PBT chemical to be phased out and makes recommendations for actions that should be implemented to achieve elimination.

- (b) Improve Regulatory and Non-Regulatory Approaches: Ecology and Health will use the list to inform efforts to maximize the effectiveness of regulatory and non-regulatory approaches for phasing out the use and production of PBTs, including improving collaboration among regulatory programs and improving regulatory and economic incentives for eliminating PBTs. .
- (c) Clean up PBTs from historical sources: Ecology and Health will use the list to increase focus on PBTs found at contaminated sites and enhance efforts to clean up sediment contamination problems.
- (d) Prevent new sources of PBTs. Ecology will use the list to enhance efforts to prevent the use and release of PBTs from new industrial and commercial sources and to encourage extended product responsibility for new sources and products.
- (e) Build partnerships. Ecology and Health will use the list to promote efforts to eliminate PBTs and coordinate with other jurisdictional programs,
- (f) Monitoring: Ecology and Health will use the PBT list to identify PBTs that are a priority for additional environmental and health monitoring.
- (g) Public Education and Environmental Information: Ecology and Health will use the PBT list to increase public and stakeholder awareness and understanding of the threats posed by PBT chemicals and the alternatives to the chemicals.
- (h) Improve and promote the development of Information: Ecology and Health will use the PBT list to develop information needed to make informed decisions on measures to eliminate PBTs.

WAC 173-XXX-015 Applicability¹

(1) This chapter applies to the department of Ecology. Nothing herein shall be construed to diminish Ecology's authority to address a permitted or unpermitted release or threatened release of any PBT under other applicable laws and regulations.

¹ Ecology has not decided whether it is necessary to include an applicability section in this rule given the rule is procedural in nature and participation by members of the public is voluntary. However, given the discussions at the first two Advisory Committee meetings, the Department decided to include a draft applicability section. The draft section is designed to clarify two points: (1) the rule is procedural and establishes criteria and procedures that are applicable to Ecology; and (2) the rule does not create new requirements for persons who use or release PBT chemicals. .

(2) This chapter provides opportunities for the public to participate in the Ecology processes for identifying PBTs and developing recommendations on measures to address current uses and releases, contamination problems resulting from past releases and proposed uses or releases from new sources. The chapter does not impose new requirements on persons who use or release PBTs, have caused past releases of PBTs or propose new uses or releases.

WAC 173-XXX-020 Chapter Summary

(1) **Introduction.** This section provides a summary of the PBT Rule. If there are any inconsistencies between this section and any specifically referenced sections, the referenced section will govern.

(2) **What are persistent bioaccumulative toxins (PBTs)?²** PBTs are chemicals that:

- Remain in the environment for a long time (persist) without breaking down;
- Accumulate in the environment and/or build up in the tissues of humans, fish and animals (bioaccumulate); and
- Are toxic to living organisms, including humans.

(3) **Identifying and listing PBTs.** This chapter will contain a list of PBTs that require further actions to reduce or where possible eliminate uses and releases in Washington.

(a) **PBTs list.** The current list of persistent bioaccumulative toxins is specified in WAC 173-XXX-110.

(b) **Criteria for identifying and adding PBTs to the list.** Ecology and Health will use the PBT criteria specified in WAC 173-XXX-120 to determine whether a chemical, or group of chemicals, should be included on the PBT list.

(c) **Criteria for removing PBTs from the list.** Ecology and Health will use the criteria in WAC 173-XXX-130 to determine whether a chemical, or group of chemicals, should be removed from the PBT list.

(d) **Process for adding and removing PBTs from the List.** WAC 173-XXX-140 describes the process that Ecology and Health will use to add and remove chemicals from the PBT List.

(d) **Involving the public in updates of the PBT list.** If Ecology and Health decide to revise the PBT list, it will use the procedures specified in WAC 173-XXX-150 to notify and involve the public.

(e) **Amending the PBT list.** Ecology and Health will make amendments to this chapter using the process described in Chapter 34.05 RCW, The Administrative Procedure Act.

(4) **Priorities for chemical action plans or CAPs.** Ecology and Health will jointly prepare chemical action plans (CAPs) for the chemicals included on the PBT list. Ecology and Health will use the evaluation criteria³ specified in WAC 173-XXX-210 to select and prioritize chemicals for which Ecology will prepare CAPs.

² This general definition is found in the Ecology PBT Strategy (December 2000).

³ To be further discussed at the Sept. 29 PBT Rule Advisory Committee meeting.

- (5) **Chemical action plans or CAPs.** When preparing a CAP, Ecology and Health will include recommendations on actions to reduce, and where possible eliminate, the use and release of specific PBTs.
- (6) The process for preparing chemical action plans includes the following steps⁴:
- (a) **Information collection.** Ecology and Health will develop and implement a plan for collecting the data and information needed to support evaluations and decisions on actions to eliminate uses and releases of PBTs in Washington. This includes, but is not limited to:
- Information on products and uses,
 - Environmental releases,
 - Environmental fate, including breakdown products and metabolites,
 - Environmental concentrations, substitutes,
 - Body burden data.
 - Technical options for reducing and eliminating uses and releases,
 - Costs of alternate options for reduction and elimination,
 - Economic benefits, including the health benefits, of the options for reduction and elimination,
 - Other information Ecology determines is necessary to support the decision-making process.
- (b) **Uses and releases.** Ecology will identify uses and sources of the PBTs addressed in the plan. Ecology will prepare estimates on the amount of each PBT released into the Washington environment.
- (c) **Reduction and Elimination Alternatives.** Ecology and Health will identify options for reducing, and where possible eliminating, the use and release of each PBT.
- (d) **Technical feasibility:** Ecology and Health will evaluate the technical feasibility of implementing the reduction and elimination alternatives.
- (e) **Economics.** Ecology and Health will evaluate the costs of implementing the reduction and elimination alternatives.
- (f) **Regulatory and non-regulatory analysis.** Ecology and Health will evaluate regulatory and non-regulatory approaches that influence current uses, releases, reduction, and elimination of each PBT.
- (g) **Recommendations.** Ecology and Health will make recommendations in the CAP to achieve a phase-out of the PBT chemical by 2020 or sooner. A draft CAP will be available for public review and comment.
- (h) **Finalizing the CAP.** After public comment on the draft CAP, Ecology will prepare a final chemical action plan.

⁴ This is from the Ecology PBT Strategy (December 2000) and from Ecology's track record in doing the Mercury Chemical Action Plan and current development of the PBDE Chemical Action Plan.

(1) **Introduction.** Ecology and Health will implement this rule consistent with the vision and goals of the *Proposed Strategy to Continually Reduce Persistent, Bioaccumulative Toxins (PBTs) in Washington State* and described in this section.

(2) **Scientific information.** Ecology believes that decisions on PBTs and actions for reducing, or when possible eliminating, their use and release must have a strong scientific and policy basis. A rigorous scientific review will be conducted when making decisions under this chapter.

(3) **Precautionary Principle.** Ecology believes that lack of scientific certainty should not postpone measures to prevent threats of serious, cumulative, and/or irreversible health or environmental damage. The Departments of Ecology and Health have a duty to take anticipatory action to prevent harm from persistent bioaccumulative toxic chemicals (persistent toxic chemicals or PBTs) even in the case of scientific uncertainty. Ecology will apply the precautionary principle when making decisions on PBTs and actions for reducing, or where possible eliminating, their use and release.

(4) **Economic Considerations.** Ecology will seek to mitigate negative economic impacts of measures that reduce, and where possible eliminate, the use and release of PBTs through technical and economic assistance, market development, and other means. However Ecology believes that negative economic impacts should not be used as a reason to avoid the adoption and implementation of reduction and elimination measures.

(5) **Public involvement.** Ecology will encourage public involvement during decision-making processes for identifying PBTs and preparing recommendations on actions for reducing and, where possible, eliminating their use and release.

(6) **Clear documentation.** Ecology intends to provide clear and understandable descriptions and rationale for decisions implementing this chapter.

(7) **Predictability.** Ecology believes it is important that this chapter be implemented in ways that allow stakeholders and the public to plan their participation in decision-making processes and future responses to recommendations that result from those processes.

(8) **Coordination.** Ecology will coordinate with the Department of Health and other state agencies and local governments, tribes, and interested parties in the development and implementation of CAPs, revisions to the PBT List, and taking other actions to eliminate PBTs.

⁵ Members of the advisory committee have expressed several concerns about “how” Ecology will implement a rule (independent of “what” criteria and processes are identified in the rule). Similar concerns have been raised in other rulemaking processes and at least one rule (the MTCA Cleanup Regulation) includes an Administrative Principles section that is designed to provide some direction on how that rule will be implemented. Ecology has used that rule as a model to create a similar draft section for this chapter. The six implementation “principles” included in the draft section are based on discussions and suggestions provided by the advisory committee during the August 18 meeting (#1) during the discussion topic “What makes a good rule?” Ecology is interested in obtaining feedback from the advisory committee on (1) Does the committee believes this type of section is useful to include in the PBT rule?; (2) do the draft “principles” capture the important concepts identified at the August meeting; and (3) Are there other implementation principles that the advisory committee believes should be included in this section?